

**MINUTES OF THE REGULAR MEETING OF THE
WASHINGTON STATE TRANSPORTATION COMMISSION
January 17, 2006**

The regular meeting of the Washington State Transportation Commission was called to order at 9 A.M., on January 17, 2006, in Room 1D2 of the Transportation Building in Olympia, Washington.

Commissioners present at the meeting were: Chair O'Neal, Bob Distler, Dick Ford, Elmira Forner and Carol Moser.

Chair O'Neal welcomed Carol Moser of Richland as the newest member of the Commission. Commissioners Stedman and Barnes were not present due to health concerns.

MINUTES APPROVAL

It was moved by Commissioner Ford and seconded by Commissioner Forner to approve the meeting minutes for May 17 & 18, 2005, June 14 & 15, 2005, November 15 & 16, 2005 and December 13 & 14, 2005. The motion passed unanimously.

TOLLING STUDY – DRAFT INTERIM REPORT OVERVIEW

Jeff Buxbaum, Project Manager, Cambridge Systematics, Inc., presented the *draft* interim report and summary of the Comprehensive Tolling Study.

Commissioners discussed pricing and traffic congestion management. Various opinions were expressed regarding issues of equity. It was observed that the state might consider providing subsidy for those that cannot afford the cost. Members observed the importance of the Legislature adopting a policy that encourages and supports the use of tolls on public facilities. Views were also expressed about the importance of the public being educated beginning at the Legislative level. Tolling encourages effective system management and provides a supplementary source of funding for appropriate projects.

The purpose and objectives of the tolling study are to create a process that facilitates the state's ability to make policy level decisions on if, where, when and how to toll. The policy framework should include what makes tolling feasible, tolling on the Tacoma Narrows Bridge and the statewide implications of tolling as well as implementation issues. Also provided was an update on public attitude research efforts regarding tolling.

The consultant made the point that it is important that there be a consistent criteria in price setting in order to optimize system performance on new and existing facilities. Project costs are not always affordable from normal sources; tolls would pay back some reasonable portion of system construction, operations and maintenance. It is important that the system be managed efficiently and effectively. In closing the Commission held open discussion regarding tolling on the Tacoma Narrows Bridge that focused primarily on equity and affordability across the board for users. Also discussed was tolling payoff on bonds and other uses of revenue collected from tolls, such as the maintenance and operation of the bridge.

The “*current plan*” is that operations and maintenance will be paid out of tolls on the new structure. This issue is very complex and needs further clarification. Ultimately the question posed is “what is the Commission’s actual authority” (for further information regarding this item please refer to handout for agenda item #2). Subsequently, the Commission sought and received an Attorney General comment in which the AG stated that tolls must be sufficient to ensure repayment of debt and costs of operations and maintenance (see Steve Dietrich letter dated February 28, 2006).

Commissioners discussed the operational side of tolling, and expressed that facility tolling needs to be defined by the state as opposed to regions, although regions may suggest or recommend to the Commission consideration of particular facilities for tolling.

It was moved by Commissioner Distler and seconded by Commissioner Ford to grant the Tolling team the authority to approve release of the final Comprehensive Tolling Study Legislative Interim Report to the Legislature subject to the inclusion of issues discussed in today’s meeting and final resolution of the governance language. The motion passed unanimously.

RAIL STUDY KICKOFF PRESENTATION

Lance Grenzeback and Michael Fischer, Cambridge Systematics, Inc., presented the kickoff presentation of the Commission’s Statewide Rail Capacity and System Needs Study. Mr. Fischer recapped the objectives of the study and key challenges of the study. He introduced the consultant teams participating in the study: Bonnie Berk, Berk & Associates Inc; Joe Bryan and Paul Bingham, Global Insight Inc; Wayne Short, HDR Inc; Monica Isbell, Starboard Alliance Company; Tom White, Transit Safety Management and Willard Keeney, Willard F. Keeney & Associates.

The study’s approach will be to look at public and private benefits of state investment in rail improvements; how the rail system improvements are assessed and how to build a clear, comprehensive and practical state policy and program. Outreach activities will include interviews with stakeholders and regional focus groups summarizing key findings. The Commission will hold study group workshops with stakeholder input. The discussions will encompass state policies and programs along with benefit-cost and economic analysis elements. Discussions will include state and regional rail capacity needs and constraints. The Rail Study project schedule was presented (for further information refer to agenda item #3 handout).

RAILEX – PRODUCE DISTRIBUTION CENTER

Jim Kuntz, Executive Director, Port of Walla Walla, provided a presentation regarding the Railex Project - Streamlining Produce Distribution. Basically produce is transported via long-haul truck, however there are two problems – increased cost and the lack of truck availability. Conventional rail is less expensive, however traditional rail is unsuitable for shipping certain produce because it is too slow and too unpredictable and risky.

Railex has identified the nation’s distribution areas that are affected most by transportation problems, and has negotiated a third-party service agreement between Union Pacific Railroad, CSX Transportation and ADS Management.

The agreement guarantees a minimum of railcars and transit time for product transport. This long-awaited system for efficiently moving produce from the west coast to the east coast is efficient and cost effective.

It successfully addresses the problems faced by conventional rail transportation and the trucking industry. When implemented it will revolutionize the produce industry and have a considerable impact on the economy of the states of Washington and New York.

In closing Mr. Kuntz noted that the plan has received support from both the House and Senate Transportation Committees.

TIRE RECYCLING USES IN TRANSPORTATION

Sherrey Hankins, President and Jim Penor, Environmental Specialist, Northwest Tire Recycling Products and Bill Stokes, President, Columbia Basin Consulting Group, provided a briefing to the Commission regarding the use of recycled baled tire applications in transportation projects. Mr. Stokes highlighted the versatile applications of baled tires within transportation projects. Collection and baling of tires helps to mitigate problematic environmental and public health issues by converting a hazard into an asset. Tire bales can be used in several different applications, such as: traditional fill for roadways, erosion and flood control, as well as rockslide retention. Construction advantages are cost savings over traditional rock and loose fill. Tires cannot be returned to their original form and cannot be recycled, therefore, waste tires are stockpiled or illegally dumped in random piles and present an environmental hazard. Baling is an alternative means of disposing of waste tires that has been introduced in the last decade in civil engineering applications. The suggested path forward is for WSDOT to identify a candidate pilot project and after analysis to expand the program if merit is found.

PROPOSED 2006 WASHINGTON STATE FERRIES TARIFF CHANGE

Ray Deardorf, Planning Director, Finance, WSF, and Alice Tawresey, Chair, Tariff Policy Committee (TPC), presented the 2006 WSF tariff change proposal to the Commission requesting approval to file the CR 102 form with the Code Reviser's Office. This filing is the second step in the formal process for notifying the public of the proposed WAC rule changes for ferry fares for WSF. WSF will seek public comment over the next several weeks throughout ferry communities. Ms. Tawresey touched on the historical intent of the Tariff Policy Committee and its membership composition. She shared information regarding the evolution of the current fare setting policy. The TPC recommends the following:

- Increase all fares and charges by six percent, rounded up to the next nickel, plus further increases not to exceed five percentage points in certain San Juan Islands fares to continue phase-in of the Tariff Route Equity formula.
- Change the standard vehicle to motorcycle fare ratio from 5:1 to 4:1 (calculated on the vehicle portion of the fare only).
- Implement an up-front, non-refundable, commercial account maintenance fee of \$50 per year with no pro-rating.
- Implement a new discount program for in-need organizations that maintains the

discounts these organizations currently realize by purchasing and severing frequent-user products.

- Limit monthly passes to 31 round trips per month; note that passes are non-transferable, non-reproducible, and intended for a single user.
- Extend over height surcharge waiver for over height vehicles with a wheelchair lift to vehicles 20 feet to 30 feet in length.
- Adjust WAC language to match WSF operational terminology under EFS.

TPC recommended tariff changes for implementation after May 1, 2006:

- At the first fare change opportunity no sooner than six months after successful completion of EFS implementation system wide, all multi-ride fares paid at toll booths will be priced the lesser of five percent, rounded up to the next nickel, or \$2.50 higher.. (Note: This provision was originally scheduled to go into effect on May 1, 2006. The language change suggested allows for the intended full six-month grace period after the successful completion of EFS implementation before initiating tollbooth pricing.)

In closing Mr. Deardorf shared that in late March the Commission will review comments and hear additional testimony before adopting a final tariff through filing of the CR 103 no later than March 30, 2006.

Commissioner Ford indicated that he would like to see online fare purchases discounted as an incentive to use the online system.

Commissioner Distler cautioned that a discount of this type would impact the fare structure, although it might be considered that the policy be changed without actually affecting the fare.

Ms. Tawresey explained that at this time the Tariff Policy Committee is not bringing forth a recommendation to add a fuel surcharge to fares (for specific information regarding tariff proposal refer to agenda item # 6 handout).

It was moved by Commissioner Distler and seconded by Commissioner Ford to approve the 2006 tariff change proposal filing of the CR 102 and take the proposal public with the inclusion that all informational material show both the online/kiosk amount and the tollbooth amount for each multi-ride fare. The motion passed unanimously.

PUBLIC AND LEGISLATOR COMMENT PERIOD

There were no public or legislators in attendance that testified.

AMTRAK PASSENGER RAIL AND FEDERAL FUNDING

Tom Till, Managing Director, Cascadia, Discovery Institute, provided an overview of Amtrak's background, corporate oversight and financial structure.

He explained the obstacles to Amtrak's effective financial operations under the current structure outlining the most critical areas as strategic planning, financial reporting and management systems, cost containment, acquisition management and accountability and oversight. He touched on general arrangements for receiving federal and non-federal funding requirements and issues of equity and program structure. The impact of overall alternative proposals for rail passenger service on the ability to secure adequate funding has been addressed.

He expressed that his view of the administration's bill is that expectations are unrealistic regarding state organization and funding to provide operating support of long-distance trains.

As well, the Senate bill, in his view, has major flaws with unrealistic expectations of general funds in the transportation budget, and little if any likelihood of securing approval of the expensive tax credit bonds.

In addition the bill provides very little in the way of reform and maintains Amtrak as a monopoly provider. In conclusion the most likely outcome, this year, is that reauthorization will be difficult to achieve.

PASSENGER RAIL PERSPECTIVE ON FEDERAL FUNDING

Lloyd Flem, Executive Director, Washington Association of Rail Passengers, expressed that his organization is strongly in favor of freight rail as well as passenger rail partnerships. He noted that the organization is planning a name change that will more closely reflect their position. Although the name change will not reflect a change in the organization's mission or scope. He expressed his opinions regarding Amtrak operations and management, noting that passenger services are excellent. Rail passenger service must be kept as a viable or a growing part of the movement of people in this country.

ADMINISTRATOR'S REPORT / COMMISSIONER UPDATES

Reema Griffith, Administrator, requested that the Commission vote on allowing for modification (resizing and color change) of the Commission's logo.

It was moved by Commissioner Distler and seconded by Commissioner Forner to allow limited resizing or repositioning and or coloring of the Commission logo. The motion passed unanimously.

Chair O'Neal provided a status report of WTP Team activities. He explained that the Team is currently in the process of setting priorities. A draft should be ready for the Commission to review in March 2006. The Rail Team is just starting to meet – stay tuned.

Commissioner Forner shared that the TIPP Team is moving forward with the administrative rule adoption process. She expressed her concerns regarding the TPAB Hood Canal Bridge audit report. She feels that the AG should be consulted prior to the release of the report to the Legislature.

Commissioner Distler explained his participation in WSF passenger-only ferries and tariff policy issues.

The Commission meeting adjourned at 4:00 p.m., on January 18, 2006.

WASHINGTON STATE TRANSPORTATION COMMISSION

DAN O'NEAL, Chair

DICK FORD, Vice-Chair

Absent

EDWARD BARNES, Member

CAROL MOSER, Member

ELMIRA FORNER, Member

ROBERT S. DISTLER, Member

Absent

DALE STEDMAN, Member

DOUGLAS MACDONALD, Ex-Officio Member
Secretary of Transportation

ATTEST:

REEMA GRIFFITH, Administrator

DATE OF APPROVAL



Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

Transportation & Public Construction Division

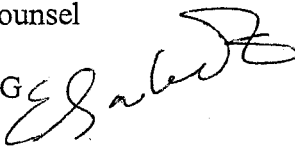
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Transportation Commission

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DATE: February 28, 2006

TO: Steve Dietrich – Senior Counsel

FROM: Elizabeth Lagerberg, AAG 

SUBJECT: Tolling Study -- Use of funds to pay costs of operation and maintenance.

ISSUE:

Under Chapter 47.46 RCW, is the Transportation Commission required to set tolls at rates that will ensure that operations and maintenance costs of the new toll bridge be covered?

SHORT ANSWER: Tolls must be set at a rate that will provide annual revenue sufficient to pay operating, maintenance and repair expenses of new toll bridges. However, the Legislature may appropriate a non-reimbursable financial contribution for bridge maintenance costs, which need not be reimbursed with toll revenue.

BACKGROUND:

At the Commission meeting on January 17, 2006, during a presentation of the Tolling Study draft, the Commission questioned whether they were required to set tolls at rates sufficient to ensure that operations and maintenance costs of the new toll bridge would be covered (in addition to bond payoff) or whether they had the option to set lower toll rates and exclude paying operations and maintenance costs.

This memorandum will address toll rates of the Tacoma Narrows Bridge Project as it is the only project constructed under Chapter 47.46 RCW.

LEGAL ANALYSIS:

Statutes governing toll projects in Washington are contained in Chapters 47.46, 47.56 and to some extent 47.58 RCW.

I. Toll Statute Overview:

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(A) **Chapter 47.46 RCW** is the chapter created for public private partnerships and governs the Tacoma Narrows Bridge project. It is being phased out upon completion of the TNB project by **Chapter 47.29 RCW** which is the new Transportation Innovative Partnership section. Thus, 47.46 will not apply to future projects.

(B) **Chapter 47.56 RCW** contains statutes on tolling throughout the state. Many of these were instituted both long before the creation of Chapter 47.46 RCW. However, there were several statutes added that pertain to the Tacoma Narrows Bridge project including RCW 47.56.165 which creates the Tacoma Narrows Bridge Account and RCW 47.56.245 which prohibits new toll revenue from paying for operations and maintenance of an existing bridge built under Chapter 47.56 RCW.

(C) **Chapters 47.58 RCW** addresses situations where new toll bridges are built near existing bridges and allows the new construction and renovation of an existing bridge to be considered as one project for tolling purposes.

II. Chapter 47.46 RCW and Operations and Maintenance.

Chapter 47.46 RCW places the final responsibility for costs of operations and maintenance for a new bridge on the project itself. It must be self-supporting, at least until the project is complete.

A. Toll revenue must be sufficient to ensure repayment of debt and costs of operations and maintenance.

The statute on toll setting for the Tacoma Narrows Bridge Project, RCW 47.46.100, makes it clear that toll charges shall be set at rates sufficient to pay operating costs and expenses in addition to other costs:

RCW 47.46.100

Tolls -- Setting -- Lien on.

(1) The commission shall fix the rates of toll and other charges for all toll bridges built under this chapter that are financed primarily by bonds issued by the state. Subject to RCW 47.46.090, the commission may impose and modify toll charges from time to time as conditions warrant.

(2) In establishing toll charges, the commission shall give due consideration to any required costs for operating and maintaining the toll bridge or toll bridges, including the cost of insurance, and to any amount required by law to meet the redemption of bonds and interest payments on them.

(3) The toll charges must be imposed in amounts sufficient to:

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(a) Provide annual revenue sufficient to provide for annual operating and maintenance expenses, except as provided in RCW 47.56.245;

(b) Make payments required under RCW 47.56.165 and 47.46.140, including insurance costs and the payment of principal and interest on bonds issued for any particular toll bridge or toll bridges; and

(c) Repay the motor vehicle fund under RCW 47.46.110, 47.56.165, and 47.46.140.

(4) The bond principal and interest payments, including repayment of the motor vehicle fund for amounts transferred from that fund to provide for such principal and interest payments, constitute a first direct and exclusive charge and lien on all tolls and other revenues from the toll bridge concerned, subject to operating and maintenance expenses.

[2002 c 114 § 7.]

The exception referred to in **RCW 47.56.245** provides that toll revenue must be used to pay for operations and maintenance of a toll facility, but cannot be used for the operations and maintenance of an existing, previously tolled facility:

RCW 47.56.245

Toll charges retained until costs paid.

The department shall retain toll charges on all existing and future facilities until all costs of investigation, financing, acquisition of property, and construction advanced from the motor vehicle fund, and obligations incurred under RCW 47.56.250 and chapter 16, Laws of 1945 have been fully paid.

(1) Except as provided in subsection (2) of this section, with respect to every facility completed after March 19, 1953, costs of maintenance and operation shall be paid periodically out of the revenues of the facility in which such costs were incurred.

(2) Where a state toll facility is constructed under chapter 47.46 RCW adjacent to or within two miles of an existing bridge that was constructed under this chapter, revenue from the toll facility may not be used to pay for costs of maintenance on the existing bridge.

[2002 c 114 § 23; 1984 c 7 § 267; 1965 ex.s. c 170 § 53; 1961 c 13 § 47.56.245. Prior: 1953 c 220 § 6.]

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B. Additional funds may be added to the Tacoma Narrows Bridge account.

Both RCW 47.46.110 and RCW 47.46.140 anticipate that the Tacoma Narrows Bridge Project may receive additional state appropriations in the form of nonreimbursable contributions.

RCW 47.46.140 addresses the use of Motor Vehicle Fund money to pay for bond retirement and initially to pay for other costs of the project such as design, development, right of way, financing, construction, maintenance, repair and operations of the project. It states that the Motor Vehicle Fund will be fully reimbursed by toll revenue for any amounts expended toward the project. The same statute states: "Funds specifically appropriated as nonreimbursable state financial contribution to the project do not require repayment." RCW 47.46.140.

Thus, if the Legislature were to appropriate a nonreimbursable contribution toward Tacoma Narrows Bridge Project costs, those nonreimbursable funds could then be expended consistent with the appropriation without the necessity of reimbursement by the toll revenue.

Both RCW 47.46.110 and RCW 47.46.140 should be read consistently with RCW 47.46.100. In fact, RCW 47.46.100 refers to both of the other statutes in section (3)(c) which states that the motor vehicle fund must be repaid. While RCW 47.46.100 requires that tolls be set at rates ensuring annual revenues sufficient to cover annual costs, bond repayments, and Motor Vehicle Fund reimbursement, it does not require that tolls be used to reimburse nonreimbursable state funding contributions, but implies that such contributions will lower the annual toll revenue required to repay all the project costs.

CONCLUSION:

The toll setting statute, RCW 47.46.100, requires that tolls provide annual revenue sufficient to cover costs, debt repayment, and Motor Vehicle Fund reimbursement. It does not exclude the option of toll projects receiving additional non-reimbursable funding to cover such costs and repayments.

-----Original Message-----

From: Dietrich, Steve (ATG) [SteveD@ATG.WA.GOV]
Sent: Monday, March 20, 2006 10:31 AM
To: O'Neal, Dan; Arny and Elmira Forner; Barnes, Ed; Distler, Robert;
Stedman, Dale; Ford, Richard
Cc: Griffith, Reema
Subject: RE: TNB Tolls covering operations and maintenance

Commissioners,

In response to Dan O'Neal's question, I provide below the statute related to the allowable term for TNB tolls. I agree that the tolls cannot be used to fund maintenance costs on the existing structure (RCW 47.46.110 & RCW 47.56.245(2)).

Regarding the cessation of tolls, tolls must be discontinued when the conditions in RCW 47.46.110(1) are satisfied. Those conditions are somewhat broader than simply paying off the bonds, so I would disagree (slightly) with Dan on that point.

RCW 47.46.110
Tolls - Term, use.

(1) The commission shall retain toll charges on any existing and future facilities constructed under this chapter and financed primarily by bonds issued by the state until:

(a) All costs of investigation, financing, acquisition of property, and construction advanced from the motor vehicle fund have been fully repaid, except as provided in subsection (2)(b) of this section;

(b) Obligations incurred in constructing that facility have been fully paid; and

(c) The motor vehicle fund is fully repaid under RCW 47.46.140.

(2) This section does not:

(a) Prohibit the use of toll revenues to fund maintenance, operations, or management of facilities constructed under this chapter except as prohibited by RCW 47.56.245;

(b) Require repayment of funds specifically appropriated as a nonreimbursable state financial contribution to a project.

(3) Notwithstanding the provisions of subsection (2)(a) of this section, upon satisfaction of the conditions enumerated in subsection (1) of this section:

(a) The facility must be operated as a toll-free facility; and

(b) The operation, maintenance, upkeep, and repair of the facility must be paid from funds appropriated for the use of the department for the construction and maintenance of the primary state highways of the state of Washington.

[2002 c 114 § 8.]

-----Original Message-----

From: Dan O'Neal
Sent: Friday, March 17, 2006 4:08 PM
To: 'Arny and Elmira Forner'; 'Barnes, Ed'; 'Distler, Robert'; 'Stedman, Dale'; 'Ford, Richard'
Cc: Dietrich, Steve (ATG); Reema Griffith
Subject: TNB Tolls covering operations and maintenance

We have a 28 February 2006 letter from Steve Dietrich discussing the issue of tolls covering operations and maintenance. Clearly they must be covered for the new structure until the bonds are paid off. However, maintenance can not be covered on the existing structure. And it would seem under current law that the tolls could not be maintained for any purpose after the bonds are paid off. Do you agree, Steve?

Dan O'Neal
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